

# EXTRACT OF A LETTER TO NEVILLE B. CRAIG, Esq.

CARLISLE, August 19, 1846.

There has been a great deal of interest excited in Philadelphia, on the subject of the power of the City to subscribe for stock to the Central Railroad. Mr. Binney's opinion is adverse to the exercise of the power. The identical question was presented to our Supreme Court at May Term, 1839, and decided against the right of a corporation to subscribe to such an object. As the question is an interesting one, I send you a report of the case which I have made up, and which I suggest that you have published in one of the Pittsburgh papers.

Joseph M'Dermond and others,  
Plaintiffs in Error,  
vs.  
James Kennedy, Def't. in Error. } Error to the Com-  
mon Pleas of Cum-  
berland Co.

This was an action of trespass by the defendant in Error against the plaintiffs in Error, who were the High Constable (being a collector of taxes,) the Chief Burgess, Assistant Burgess, and Town-Council of the borough of Newville.

The declaration was in common form, charging the defendants with taking and carrying away a dearborn wagon the property of the plaintiff.

The defendants pleaded specially that James Kennedy was seized of a house and lot in Newville, which was an incorporated Borough, having powers under their charter to assess, levy and collect taxes, &c.—that a tax was assessed upon the property of the plaintiff, that a warrant was given to Joseph McDermond to collect the same, and that the wagon was taken by virtue thereof, for the payment of the said tax. The object of the parties was to decide the question of law which arose upon the following facts:

In 1835, the Cumberland Valley Railroad Company had located their road at the Crossing of Big Spring, about one mile above the borough of Newville. An application was made to the Board of directors, by the citizens of Newville, so to change the location as to bring the Road near to the town, that it might derive advantages from the trade and travel which it would bring. The location thus prayed for was more expensive to the Company to the amount of about \$5,000, and it was proposed that if the borough of Newville and citizens would subscribe one-half of the expense, (\$2500) the Company would make the alteration and so locate the road as that the borough of Newville would derive the advantages. Individuals interested in the Borough did subscribe \$1500, and nine-tenths of the property holders of the Borough petitioned their Council to subscribe on behalf of the Borough \$1000. In consequence of which, an ordinance was passed, making the subscription of \$1000 payable one-third on the 1st April, 1836, one-third when the work is half finished, and the residue when the work shall be completed; and authorizing a loan to be made on the faith of the Borough, to meet the payments.

The loan was obtained and the money paid by the Borough to the Railroad Company. Subsequently the Council of the Borough assessed a tax of five mills on the dollar "for the purpose of defraying the current expenses of the Borough." It was the collection of this tax from the plaintiff, James Kennedy, by the levy on his wagon, which was the trespass complained of. The Counsel of the respective parties agreed to put the cause upon the question whether the Borough of Newville had the legal power to make such a subscription to the Cumberland Valley Railroad Company,—as this had been made; and to assess and collect taxes for its payment.

The sixth section of the act of incorporation, passed the 6th Feb. 1817, provides: "That it shall be the duty of the Town Council to hold quarterly meetings, etc., at which meetings they may enact, revise, repeal and amend all such by-laws, rules, regulations and ordinances as shall be determined by a majority of them necessary to promote the peace, good order, benefit and advantage of the said Borough, &c. And Provided also, that in assessing such tax, due regard shall be had to the valuation of taxable property taken for the purpose of raising County Rates and Levies, so that the said tax shall not in any one year exceed one half cent in the dollar of such valuation unless some object of general utility shall be thought necessary, in which case a majority of the taxable inhabitants of said Borough shall approve of and certify the same in writing under their hands to the Town Council, who shall proceed to assess the same accordingly."

The Court below (Reed, President,) instructed the jury that it was not within the corporate powers of the Borough of Newville to make the subscription to the Cumberland Valley Railroad Company; and that the assessment of a tax for the payment of it was illegal, and the plaintiff was entitled to recover. Verdict and judgment for the plaintiff.

The record was removed to the Supreme Court, and argued at May term, 1839, by Watts for the plaintiff in Error, and Biddle and Williamson for the defendants in Error, and the judgment was affirmed.



